

ELECTRONIC DISCOVERY WORKING GROUP  
BEST PRACTICES FOR ELECTRONIC DISCOVERY  
OF DOCUMENTARY MATERIALS  
IN LARGE CASES

September 2005  
U.S. Attorney's Office  
Western District of Washington

In accordance with Rule 16 of the Local Criminal Rules of the Western District of Washington ("Local Rule 16"), no later than the Local Rule 16 discovery conference the U.S. Attorney's Office will discuss with all defense counsel whether electronic discovery of documentary materials is appropriate in the case and, if so, what arrangements should be made. "Electronic discovery" is defined as the production of discovery materials in the form of electronic files. Although we anticipate pursuing electronic discovery of documentary materials in an increasing number of cases, we cannot commit to doing so in all cases. These best practices are limited to large cases, *i.e.*, those cases involving the equivalent of more than one box of documentary discovery.

In those large cases where the parties agree that electronic discovery of documentary materials is appropriate or the U.S. Attorney's Office already has generated electronic versions of documentary materials prior to the Local Rule 16 discovery conference, the U.S. Attorney's Office will pursue the following best practices:

1. We will provide graphic image files of documentary materials that have been scanned in the industry standard single-page .tif format. Each document page will be identified by a unique Bates or similar identification number.
2. When the parties in a case agree or when, prior to the Local Rule 16 conference, we already have obtained electronic text files for documentary evidence (typically through optical character recognition (OCR) scanning), we will provide those text files in the industry standard .txt format.
3. Absent alternative arrangements agreed upon by the parties in a case, upon request by defense counsel we will provide the .tif files, together with the .txt files in those cases where we have obtained them, in a form that includes free viewer software (*e.g.*, I-Publish) that enables the user to access the files and perform some annotation and/or search functions.
4. When we create an electronic database (using the DOJ-issued database software Concordance), upon request by defense counsel we will provide the "load" files that enable the Concordance database program to link .tif and .txt files with each other and with other associated data fields (*e.g.*, date, author, title of document).

5. To assist counsel with review of electronic discovery of documentary materials, we will provide indexing information that identifies the source and type of the materials, organized by Bates or similar identification numbers. This best practice should not be construed to require the United States Attorney's office to create an exhaustive "index" describing every document produced in electronic form. Rather, what we will provide is in the nature of a discovery letter that allows the defense to identify various types of discovery items within the electronic files produced. For example, the government will identify which electronic files contain reports of defendants' statements or which electronic files represent documents obtained from a particular bank. We reserve the right not to produce any information that we consider to be work product.
6. If, prior to the Local Rule 16 conference, we create an electronic database of discovery materials, we will endeavor to create it in such a manner as to permit us to produce those portions of the database that we do not consider to be our work product.
7. At the Local Rule 16 discovery conference, we will discuss and consider in good faith possible cost-sharing measures in handling voluminous discovery, such as jointly-commissioned Bates numbering, scanning, and/or "objective coding" of documentary materials by outside vendors; provided, however, that our ability to enter into cost-sharing agreements may be limited by our budget constraints and/or the Department of Justice requirement that we allocate litigation expenditures only for mandatory obligations.
8. In any case where electronic discovery has been generated through the scanning of physical documents in our custody or control, we will make those documents available for inspection in accordance with Local Rule 16 and Rule 16 of the Federal Rules of Criminal Procedure.
9. At the Local Rule 16 discovery conference, we will discuss and consider in good faith alternative arrangements to the above as requested by counsel.